

Buffalo Neighborhood Housing Services, Inc. and John J. Baker, Marie Przybyl and Cynthia D. Draper. Cases 3-CA-9797, 3-CA-9998, and 3-CA-10038

26 August 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On 1 December 1982 Administrative Law Judge Harold Bernard, Jr., issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings,¹ findings,²

¹ Respondent has excepted to the Administrative Law Judge's ruling at the hearing admitting into evidence certain minutes of meetings held by Respondent's board of directors. Respondent contends that these minutes are inherently unreliable and legally inadmissible as hearsay under the Federal Rules of Evidence. The General Counsel contended at the hearing that the minutes are business records of Respondent and, therefore, are properly admissible. The record establishes that Respondent maintains a regular business practice of making a written record of discussions at its board of directors' meetings, and that this record is in the form of minutes taken at or near the time of the board's meetings, principally by its board secretary, Stephen Godzisz. At the hearing, Godzisz testified as to the preparation of these minutes and to the substantive discussions at the board's meetings as reflected in the minutes. The Administrative Law Judge credited fully Godzisz' testimony, finding that his testimony "earned highly commendable marks based upon its clarity, spontaneity, straightforwardness, and over-all genuine tenor of truthfulness." While Respondent contends that the minutes at issue were not submitted to the board of directors and were not in its possession at the time of the hearing, the record reveals that Respondent maintains no standard or uniform practice requiring formal or informal approval or adoption of the board secretary's minutes and that secretary Godzisz did in fact timely submit a copy of the disputed minutes to a management representative of Respondent, albeit not to the board itself. In these circumstances, we find no merit to Respondent's exception to the admission of the minutes. Moreover, we note that secretary Godzisz credibly testified at the hearing on matters relevant to this proceeding that were discussed in these minutes and was cross-examined vigorously by Respondent concerning such matters. Further, Respondent, as part of its defense to the allegations in the complaint, introduced into evidence certain other board of directors' minutes prepared by board secretary Godzisz. In any event, it is well recognized that the National Labor Relations Board has considerable discretion in applying the Federal Rules of Evidence pursuant to its statutory authority under Sec. 10(b) of the Act. Cf. *Newton Sheet Metal*, 238 NLRB 974, 975 (1978).

² Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In sec. II, A, of his Decision, under the heading, "Further Respondent Knowledge," the Administrative Law Judge inadvertently states that a committee meeting of Respondent occurred on 21 March 1980. The correct date is 21 May 1980.

and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified herein, and hereby orders that the Respondent, Buffalo Neighborhood Housing Services, Inc., Buffalo, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as modified herein:

1. Substitute the following for paragraph 2(c):

"(c) Expunge from the personnel files of Baker and Przybyl any references to the adverse job performance evaluations and their discharges hereinabove found discriminatorily motivated and notify them in writing that this has been done and that evidence of these discriminatory actions will not be used as a basis for future personnel action against them."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

WE WILL NOT interrogate employees concerning their union activities or sympathies.

WE WILL NOT promise employees their problem will be solved without a union.

WE WILL NOT threaten employees with discharge or with any other reprisals for engaging in union activity.

WE WILL NOT tell employees unions are not allowed in our program.

WE WILL NOT order employees to stop union activities.

WE WILL NOT create the impression that we are keeping the union activities of employees under surveillance.

WE WILL NOT discriminate against employees by discipline, exaggeration of job evaluations, extraordinary surveillance, unnecessary telephone calls at home, deprivation of office keys, or imposition of any other more onerous or difficult working conditions of any kind on employees because they engage in activities seeking to form a union or seeking union representation.

WE WILL NOT refuse to pay promised or scheduled wage increases to John J. Baker or Ann Marie Przybyl or any other employees because of their union activities.

WE WILL NOT issue unfavorable job evaluations to Baker, Przybyl, or any other employees because of their union activities.

WE WILL NOT coercively interrogate any employee concerning the reasons why any employee filed a charge with the National Labor Relations Board.

WE WILL NOT impose more stringent sick leave procedures on any employee because they file charges with the National Labor Relations Board.

WE WILL NOT discharge John Baker or any employee or force Ann Marie Przybyl or any employee to quit because of his/her support for a union.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them under Section 7 of the Act.

WE WILL offer John Baker and Ann Marie Przybyl immediate and full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights or privileges previously enjoyed, and we will make them whole for all the pay, including their promised pay increases, with interest, which they lost as a result of our discriminatory action.

WE WILL remove and expunge from their records any reference to the unfavorable job evaluations and discharges of Baker and Przybyl because of their union activities, and WE WILL notify them that this has been done and that evidence of these unlawful actions will

not be used as a basis for future personnel actions against them.

BUFFALO NEIGHBORHOOD HOUSING SERVICES, INC.

DECISION

STATEMENT OF THE CASE

HAROLD BERNARD, JR., Administrative Law Judge: These cases were heard in Buffalo, New York, in July 1981 pursuant to consolidated complaint allegations that Respondent discharged John J. Baker and constructively discharged Ann Marie Przybyl because the two employees engaged in union activities, and further, that Respondent interrogated and retaliated against Cynthia Draper because she filed charges under the Act thereby, in sum, violating Sections 8(a)(1), (3), and (4) of the Act. Respondent's answer denies any conduct violative of the Act. All parties were accorded full opportunity to examine and cross-examine witnesses, to introduce evidence, to present oral argument, and to file briefs.

Upon the entire record in this proceeding, including my observation of the witnesses and briefs filed by counsel I make the following:

FINDINGS OF FACT

1. JURISDICTION

Respondent is a nonprofit corporation located in Buffalo, New York, where it is engaged in the operation of programs designed to restore commercial and residential neighborhoods located in Buffalo. In addition to its central office or division, Respondent maintains six other facilities in neighborhoods throughout the city, including the Broadway-Fillmore division involved in these cases. Respondent received funds from HUD, through Buffalo, the State of New York, and from private sources such as lending agencies for operations in the year prior to November 1980 exceeding \$650,000, and purchased goods valued in excess of \$5,000 from sources inside the State of New York which had received such materials directly from sources located outside the State of New York. The Regional Director's Decision and Direction of Election in prior representation case (3-RC-7930)¹ further reflects that Respondent clearly "retains sufficient control over its employees' terms and conditions of employment so as to be capable of effective bargaining with the employees' representative" and that Respondent did not thereby share in the exemption from coverage by the Act granted a State or its political subdivisions. (Citing *National Transportation Service*, 240 NLRB 565 (1979).) Respondent's request to the Board for review of the Regional Director's well-supported decision finding that Respondent was an employer engaged in commerce within the meaning of the Act was denied. (G.C. Exh. 4.)

A further aspect to that decision was that the neighborhood and central divisions were found not to be sepa-

¹ *Buffalo Neighborhood Housing Services, Case 3-RC-7930*, November 21, 1980, G.C. Exh. 3.

rate employers because, *inter alia*, they were organized together in an interlocking structure of "neighborhood and central boards" (p. 7), there was centralized control over labor relations functions and policies and there was a unity of purpose or "common goal," *viz* neighborhood revitalization and rehabilitation.

At the hearing on the present matter Respondent stipulated that the Board had jurisdiction over Respondent up to the point when, it alleged, the Broadway-Fillmore neighborhood division were separately incorporated—an occurrence which Respondent's witness testified as having been completed shortly before the time of the hearing. No certificate of incorporation was available at the hearing. Respondent also offered testimony alleging that a time subsequent to the hearing each neighborhood division would be responsible for contracting directly with Buffalo city officials for funding. Such events were noted by Respondent in an effort to raise a question whether the Board continued to have jurisdiction over this matter as of the time of this unfair labor practice proceeding. Even assuming *arguendo* that the unverified or anticipated events were to be established in the record however, such would not, in my view, warrant a modification in the finding of Board jurisdiction inasmuch as separate incorporation and individual contracting of funds have not been demonstrated as altering the numerous other factors relied on to support the earlier jurisdictional finding, no single one of which was relied on for said conclusion. In other words, a sufficient commonality in functions, goals, labor relations, personnel functions and policies would continue to obtain over Respondent's operations so as to combine all the divisions together, including the central division, for jurisdictional purposes. I therefore find, on the basis of the prior representation case decision, Respondent's stipulation, described above, and the other considerations noted, that Respondent is an employer engaged in commerce within the meaning of the Act and continued to be such at the time of the hearing.

Respondent counsel expressly chose to raise no issue with the complaint allegation that the Union, Local 212, Office and Professional Employees International Union, AFL-CIO-CLC, is a labor organization as defined in the Act, and it is so found.

II. THE UNFAIR LABOR PRACTICES

A. *The Discharge of John Baker and Constructive Discharge of Ann Marie Przybyl*

The time frame for relevant events is the period February through September 1980.

B. *Background*

John Baker started work in February as a housing rehabilitation specialist in the Broadway-Fillmore neighborhood division, where he prepared specifications, wrote instructions, and counseled homeowners on construction matters related to low-cost loans available to the property owners through Respondent's program. Ann Marie Przybyl started work on March 23 as an administrative assistant there handling accounts, bookkeeping, typing, filing, telephone calls, and initial contacts

with clients. Baker was hired at a salary of \$16,500 per year and Przybyl \$9,500 both, in addition, being promised by the executive director at Broadway-Fillmore, Anthony Smolenski, \$500 raises in salary after 3 months.

C. *Agency Status*

There is no question on this record that Executive Director Smolenski directed and supervised the work done by the staff at Broadway-Fillmore, and that the position of executive director in Respondent's divisions carries with it important indicia of supervisory authority to assign work, oversee division operations, monitor employee working hours, evaluate employee performance, and discipline employees. Moreover, Respondent's executive directors were excluded from the bargaining unit found appropriate in the prior representation case described above as supervisors. I find Smolenski is a supervisor and at all times relevant herein an agent of Respondent who acted on its behalf within the meaning of Section 2(11) and (13) of the Act. In addition, I find, despite Respondent's merely general denial of such complaint allegation, that the executive officers and members on both the Broadway-Fillmore board of directors and Respondent's central division board of trustees identified in the course of this Decision are, by dint of their clearly demonstrated and uncontroverted supervisory authority and representative capacities, also supervisors and agents of Respondent in the daily conduct of its operations, as will be more specifically demonstrated hereinafter. *Cumberland Farms Dairy of New York*, 258 NLRB 900 (1981).

D. *Organizational Structure*

Emerging from the record is the following structural backdrop against which it will be useful to view events. There is the central division or board of trustees of the Buffalo Neighborhood Housing Services Inc., overseeing six neighborhood divisions which in turn each consists of a separate board of directors overseeing its own office staff consisting of an executive director and employees.² (G.C. Exh. 5)

1. *Broadway-Fillmore operations*

Respondent's operations at its Broadway-Fillmore division appear unmarked by any unusual problems until the period beginning sometime in mid-March and April after both Baker and Przybyl had attended separate conferences concerning neighborhood housing services and returned with reports that they had encountered expressions of interest by conference participants—their counterparts in other neighborhood housing services operations—in union representation.

2. *Early discussions covering a union*

Baker discussed with Smolenski³ and Przybyl the topic of union representation on March 18 and 19 and

² There is also an inspector, paid by the city.

³ Baker and Przybyl are credited over Smolenski's general denial that they had ever discussed unions.

also, the same day, spoke with employees Deborah Wyatt and Cynthia Draper at central division headquarters during lunchtime. Also present were Michael Fitzpatrick, director of resources and development, and Anthony Potenza, Respondent's executive vice president, who questioned whether the city would allow a union in the neighborhood housing service. Baker replied that the city was comprised of unions or dealt with unions so that would hardly be an issue. On March 28, during his report on the conference to the Broadway-Fillmore board Baker was asked to summarize what he had learned and responded with a reference to an interest being generated in union representation at the conference. Baker recalls being told that there was no trouble here "so we do not relate to any of this stuff." Later at a bar and grille discussion continued among board members Louis Blizniak, Stella Puska, board vice chairperson, Stephen Godzisz, board secretary, employee Cynthia Draper, Przybyl, and Baker over the ramifications a union would cause in a neighborhood housing services system with those present wondering whether a conference participant involved in the subject as described by Baker would ever do "it." Assistant board chairperson Puska stated it was not necessary to form a union as the board and staff were "close."

a. Respondent's knowledge

Przybyl corroborates Baker's account, adding that Baker specifically informed board members on March 28 that unionization seemed to be necessary among NHS operations throughout the country, and that he stated everybody seemed interested in it because there did not seem to be any set policies anywhere. She also added that at the bar and grille the idea of having a union in Buffalo was raised and discussed.

Returning from her own conference held on April 20-22, Przybyl also discussed with Smolenski and Baker on numerous occasions throughout the remaining days in that month, the interest she also encountered in union representation among other administrative assistants with similar concerns.

b. Changes in supervision's attitude toward Baker and Przybyl

The record demonstrates an abrupt change in Smolenski's attitude and supervisory style towards both Baker and Przybyl in the aftermath of their discussions and expressions of interest concerning union representation. Thus, in mid to late April Smolenski moved his desk from its location alongside Baker and Przybyl's desks in the center of the office to a very small cubicle in the rear of the building, formerly used as a stockroom. According to Przybyl's undenied testimony, Smolenski became very "particular" about timesheets, highly critical of her typing and filing, engaged in a lot of whispering to board members on the telephone, and walked around making notes on a pad while observing Baker and Przybyl at work. Przybyl also was no longer allowed to open office mail whereas before she was always the one to open and circulate it. At this hearing Smolenski testified by way of explanation under leading questioning merely that there

was no policy pursuant to which the executive director's mail was to be opened; and further that his conduct in these respects and others to be noted further herein occurred when he became convinced the two were out to get him to lose his job.⁴ Baker further testified that things worsened to the point where Smolenski would only communicate with Baker and Przybyl by written memorandum.

c. Withholding of pay increases

In addition to a colder office atmosphere, the record further demonstrates that both Baker and Przybyl were not granted the wage increases promised to them by Smolenski upon being hired. Thus, on May 6, after his 3-month period had been served, Baker approached Smolenski and told him that since his time was up and he had received indications from the board that he had done a good job he wanted the raise promised him earlier. Smolenski replied merely that he would refer the matter to personnel for disposition.

On May 14, the Broadway-Fillmore board met and Baker was assured the board would make good on Smolenski's promises, though the board chairperson Robert Jernatowski explained to Baker and Przybyl that Smolenski's action had allegedly placed the board in an "awkward position." After the board meeting, Baker and Przybyl discussed their feelings towards union representation with board secretary Stephen Godzisz, informing him that they believed if the employees had a union to protect them there probably would have been no difficulty with the raises. The two told Godzisz that if the difficulty continued they would be interested in looking for such union protection to get the promised raises.

3. Further Respondent knowledge

Godzisz admittedly informed board members on the community relations committee of the Broadway-Fillmore board on March 21 that Baker intended to get a union if the board did not keep its word regarding the raises. On May 22 Godzisz told Baker and Przybyl he had done so but that he felt the board would not "allow" a union. Baker further testified that he again spoke to Jernatowski about the third week in May concerning the raises and was told again that the board was in an awkward position but it (the raises) would go through and be rubberstamped.

4. Initial job evaluations and worsened conditions

Around June 3, after her 90-day period had expired, Przybyl was given an evaluation by Smolenski which reflected favorably on her work performances,⁵ but when she asked if he intended to honor his promise of a wage increase Smolenski refused to discuss it thereby casting doubt on such prospect.

⁴ Respondent offered no evidence tending to support this alleged point of view.

⁵ G.C. Exh. 12, rejected exhibit file, constitutes the purported evaluation; the above is based on undenied testimony of Przybyl as partly corroborated by Baker.

Matters in the office worsened further. In a dispute over submission of a leave slip between Smolenski and Baker, the former discharged Baker and submitted a letter to the board via Jernatowski concerning Baker's shortcomings to support the action, accusing Baker of "not performing his duties satisfactorily and of being unruly." (G.C. Exh. 19.) It is instructive for purposes of analyzing the later board action taken against Baker in September to note that the board chairperson, without dissent is recorded at a June 18 meeting as concluding that Smolenski's charges against Baker were, "petty and lacked substantiation without exception." (G.C. Exh. 20.) Equally relevant to note is Jernatowski's uncontradicted observation at the same meeting that "no one had any complaints against Ms. Przybyl and that *she is doing a great job.*" (Emphasis supplied.) (G.C. Exh. 19, p. 3.)

Baker, in mid-June, contacted his counterpart at another division and the two concluded they could look further into contacting a union. Baker testified that he "found one" on July 9 or 10 and Przybyl testified that she contacted a union representative on July 9 from the "CSEA."

In an effort to improve worsening conditions⁶ in the office Przybyl and Baker initiated a meeting with board member Josephine Galata and board secretary Stephen Godzisz on July 14 at a local eatery. Their intention was to bring to the board's attention the mounting problems, and press further for payment of the promised wage increases by disclosing again their intention to seek union representation "to secure our position."

Przybyl told Galata and Godzisz that she and Baker had contacted OPIEU (the Union herein) and another union, CSEA, to learn how to form a union. Baker commenting that perhaps getting union representation was the best way to solve all their problems. According to both Przybyl and Baker, Galata responded, "that she felt that we should not look into unions, and she promised that the Board of Directors (a local councilman) would take care of us and there was no need for a union and it would only complicate matters if we pursued this unionization." While Galata incredibly denies that the topic of a union was even mentioned Godzisz corroborates the Przybyl-Baker account and it is therefore found that Respondent, through Galata, promised employees Baker and Przybyl improvements in working conditions on July 14 in order to dissuade them from seeking union representation thereby violating Section 8(a)(1) of the Act.

On July 16, 2 days after, the board met and during a discussion including Przybyl and Smolenski, the latter was told that Przybyl should be allowed to do her job as bookkeeper, a reference to Przybyl's supported criticism that Smolenski had interfered with such functions causing a discrepancy to arise in bookkeeping tabulations. It is instructive to note that the matter of Baker and Przybyl's wage increases was tabled with the excuse that

board members had been unavailable.⁷ It is further relevant to note that in the same meeting it is undenied that Godzisz, the board's own secretary-member, suggested to Smolenski that *he* resign because he was preventing other people from doing their jobs in the office and not following the policies of the board or procedures on systematic inspection of homes. In any event, this meeting also led to a grievance and evaluation committee being formed, pursuant to which *inter alia* employee evaluations would be secured.

Somewhat paralleling developments in the same period included stepped up efforts by Smolenski in supervisory actions towards Baker and Przybyl. Thus, the record demonstrates that Smolenski, who earlier in mid-June confronted Przybyl with a paper entitled "Want List" whereon Przybyl was to set down what she "wanted," took to communicating with staff solely in written memorandum, rarely spoke, kept his door closed, once rifled through Przybyl's purse, phoned her home at odd hours—once to unnecessarily reiterate a routine instruction and another time to reprimand her for not having typed something. Baker testified that Smolenski called him at night as well, "screaming about some point of office procedure he felt should be attended to" on three or four occasions. Baker further testified that he saw Smolenski writing down what Baker and Przybyl said to each other on the telephone,⁸ that Smolenski ordered them not to go out on jobs together, or to lunch together—the latter on the transparently frivolous basis that it was not provided in NHS policy that the two have lunch together. Smolenski does not deny the above, offering instead partial excuses, such as the need for written instructions because unspecified orders had not been carried out, and the further excuse that there were no procedures calling for Przybyl to open the director's mail.

5. The meeting of Respondent's grievance and evaluation committee

At a later meeting of the grievance and evaluation committee on July 23, Smolenski, Baker, and Przybyl were invited to attend and address the committee with any complaints or grievances they had.⁹ The record does not contain the minutes of the meeting, but for present purposes the testimony of its chairperson, Daniel Glowacki, suffices. Glowacki testified that the "consensus of those present was that the" three individuals were not living up to their prior agreement that they had made on June 18, *viz* in essence, to work together, not to antagonize each other, to work for a better Broadway-Fillmore Neighborhood Housing Services. The committee decided to request all three submit "open" letters of resignation, the avowed purpose of which was to, in Glowacki's own words, force them all to quit. About

⁷ Baker was told people were in and out of town and they could not get to it.

⁸ Following the July 16 meeting Smolenski was directed to return his desk to its former position alongside the desks occupied by Baker and Przybyl.

⁹ It is not clear from the record that the meeting was an effort to "secure" grievances from employees as opposed to, as Glowacki testified, as a result of all three individuals failing to comply with their agreement to work together more harmoniously.

⁶ In addition to those already noted, Przybyl described how Smolenski had disrupted office work by performing her duties, sometimes incorrectly, and mishandling a disbursement causing double payments. Baker referred to general problems with loan packaging.

August 4, Baker and Przybyl received the letters, which also provided, in addition to "open" resignation, that the office staff activities would be closely monitored during the following 30 days. The complaint alleges that such committee action stemmed from the union activities of Baker and Przybyl, but in his brief counsel for the General Counsel fails to address this allegation or point to any supporting proof abandoning such position. The record, moreover, fails to support by any direct evidence, let alone a preponderance of proof, that this committee action arose from considerations prohibited by Section 8(a)(1) of the Act. Moreover, a scrutiny of the circumstances surrounding this course of action raises the reasonable possibility that at least in part the committee was addressing what it perceived to be a generally "bad" situation, albeit with perhaps a meat-axe approach. It will therefore be recommended that this allegation be dismissed for want of proof.

Nonetheless, an important further development in the circumstances is that both Przybyl and Baker complied with the committee's directives, manifesting a cooperativeness in contrast to Smolenski, who refused to follow the committee's directives. In this connection it should be noted that both Baker and Przybyl were informed by Jernatowski and Godzisz on August 4 or 6 that the "open" letters of resignation *had nothing to do with job performance*. Godzisz further advising the employees, according to undenied testimony by them, that it would not be smart to try to start a union because the "Board" would not allow it. By confronting the two employees with the threat of unspecified reprisal by the board and that the board would not allow it, it is found that Respondent through secretary-board member Godzisz coerced employees in their rights to seek union representation as guaranteed in Section 7 of the Act thereby violating Section 8(a)(1) of the Act. The two submitted their signed letters on August 11, *inter alia*, reminding the board that they still had not been paid the promised wage increases. (G.C. Exhs. 9 and 14.)

6. Smolenski's knowledge

The record indicates that prior to a meeting of rehabilitation specialists (rehabbers), scheduled on August 6, during which employees agreed to conduct a later meeting on becoming represented by the Union, Smolenski asked Baker if he was out to get him. During a phone call on August 11, this agreed to union meeting was scheduled for August 19 at noon and again the record shows that Smolenski referred to this further meeting as the one where, "this is where you get me" which remark, taken together with the proximity of the staff desks and telephones in the office, as well as Smolenski's own admission to such effect, warrants the conclusion he was aware of the union-related meeting before it took place. *NLRB v. Link-Belt Co.*, 311 U.S. 584, 602 (1941).

The noon meeting was attended by four employees, including Przybyl and Baker, as well as Jerry Skrzeczkowski, representative for the Office and Professional Employees Union. Employees signed union cards and it was agreed that a letter would be sent to the board members indicating the involvement of Baker and Przybyl in the organizing efforts.

In a development somewhat paralleling the employees' union activities but predating the August 19 union meeting, a spiraling dispute over Smolenski telephoning Przybyl at home occurred and the grievance and evaluation committee met again on August 14. Based on Smolenski's comments noted above prior to the rehabbers meeting on August 6 it would be fair to infer that Respondent, through Smolenski, had further knowledge concerning employee union organizational interests and activities prior to this August 14 grievance and evaluation committee meeting. Such an inference would be even further justified by the fact that Galata served on this committee and as shown above, had such knowledge well before August 14. However, whether such knowledge played a part in the committee's deliberations is not established by the record information, which is too shallow in depth to make such a finding. Chairperson Daniel Glowacki testified the committee decided to recommend to the board firing Smolenski and Baker at this meeting but that *he* had no knowledge of any union activities by Broadway-Fillmore employees.

Whatever may have been the undisclosed motives for the committee action on August 14, the developments following the employees' union meeting on August 19 leave no room for doubt concerning the motives behind the board's action towards Baker and Przybyl on August 20.

7. The board action

After the Union agreed to represent employees during the meeting on August 19, Union Representative Skrzeczkowski, by letter dated August 19, which was hand-delivered to board members before a board meeting scheduled on August 20, notified the board members that Baker and Przybyl were "actively assisting the [Union] in organizing for the purpose of negotiating improvements in wages, hours of work and other conditions of employment." (G.C. Exh. 10.) The reaction by board members at the meeting was recorded in minutes prepared by Godzisz, whose testimonial performance earned highly commendable marks based on its clarity, spontaneity, straightforwardness, and overall genuine tenor of truthfulness. I credit his testimony concerning the minutes and events recorded therein over the failure to recall manifested by other board members, their failure to deny specifics in the minutes while merely testifying feebly that they did not recall ever seeing the minutes beforehand, and the genuine lifelikeness in the tone and substance contained in such minutes.

Godzisz testified he contacted board members the same day the letter arrived¹⁰ and the reactions of board members was to view the letter as a threatening gesture.¹¹ Thus, Godzisz testified that board member Olga Melling said she thought it was a threat and did not like it, telling him, "I don't know who they think they are threatening us with something like that." Other board members exclaimed they did not think it was possible due to the involvement of Federal funds. Members Bliz-

¹⁰ Delivery of copies of the letter had been expedited.

¹¹ When Skrzeczkowski phoned Galata, seeking her help for employee efforts, the latter threatened to call the police.

niak and Joseph Galelo both stated they considered it a threat to the board. Blizniak stated that Baker and Przybyl could not do this—that “it” was a volunteer board. Godzisz testified further that a motion was made to fire Baker, which was passed; and that Glowacki said to keep Przybyl on until a new staff was hired and then let her go. Blizniak stated that Przybyl was involved in the whole thing with Baker. Godzisz further testified that so far as he knew the board had not been considering the firing of Baker prior to the board meeting on August 20, that there was no discussion of his work performance¹² and, in any event that it was the letter from the Union that caused Baker’s discharge. The minutes support Godzisz’ testimony and reflect that he presented the board with copies of the union letter, read it to the group and reminded them that all had been sent copies. The minutes reflect Blizniak as stating “[they] had no business trying to get a union in here,” Galata agreeing with Blizniak and stating further that she did not like it, and that Godzisz told the board he knew of the activity and had informed Jernatowski, the grievance committee, and Plizka before hand. The minutes further reflect that Blizniak said, “they shouldn’t be allowed, that’s all— We shouldn’t put up with this,” Galata adding that “she [Przybyl] is involved in all this too with John [Baker]. Her name is on that letter, not just John.” (G.C. Exh. 21.)

8. Further evidence of the board’s motive

Further events that same day highlight still further the board’s motives for firing Baker and resolving to get rid of Przybyl “later.” Thus, Przybyl testified that during a telephone call on August 20 board member Peter Konczakowski told her he had received a call from Godzisz and he “read me this union letter of yours.” Konczakowski then proceeded to inquire of Przybyl why she was engaging in such efforts asking, “What are you trying to do by forming this Union?” I find that by coercively interrogating Przybyl concerning her activities in such regard Respondent, through Konczakowski, violated Section 7 of the Act. *Arrow Automotive Industries*, 256 NLRB 1027 (1981). Konczakowski went still further and told Przybyl this was complete nonsense advising her that without prior formation and payment of dues a union could not protect her anyhow and that unions were not allowed in community programs thereby confronting her with futility of organizing efforts in violation of Section 8(a)(1) of the Act. When she asked “protection from what?” he replied that she knew, and added the threatening remark that, “you know what the business of union can mean to your job” thereby, it is found further violating Section 8(a)(1) of the Act by threatening discharge based on Przybyl’s union activities.¹³ *Latimer Associates Limited*, 258 NLRB 1012 (1981).

¹² The record shows that there was no job evaluation basis for the board’s consideration and decision on August 20.

¹³ Konczakowski could not recall this discussion; Baker corroborates Przybyl.

9. Discharge of Baker

On September 2, Baker was given a letter dated August 21 citing incompatibility as the reason for his discharge but at the same time Jernatowski told Baker he should not “have acted on his own” and refused to respond to Baker’s request for clarification concerning the asserted “incompatibility.” The discussion occurred in the Broadway-Fillmore office where, that same time, Galata told Przybyl she was there to “watch her.”

Chafing under the board’s treatment of her in the preceding period of time, the record shows that Przybyl wrote a letter to the board asking for assurances concerning her position. (G.C. Exh. 15.) The board discussed the letter on September 3 revealing still further its unlawful design to effect Przybyl’s departure. Godzisz testified that a board member stated with reference to Przybyl’s letter: “First she threatens us with a union then with this, let’s fire her.” Galata said, according to Godzisz, that Przybyl was in the union business with Baker and both should be fired, and that Plizka said the board should not fire Przybyl but not give in to her demands *so she would resign under those circumstances*. Galata then stated that she and another would watch Przybyl and a consensus was reached that she, Przybyl, should not have a key to the office because she could not be trusted. The minutes again support Godzisz’ testimony, reflecting further that Galata said, “I’ll meet Ann Marie tomorrow morning and let her in the office. First thing I’ll tell her what she’s supposed to do and show her her job specs. I’ll tell her she’s still on probation so she’d better watch her step. She’s not gonna threaten us with no union.” Plizka responded, “Make sure she knows we won’t give in to any demands. We won’t meet her terms.” Galata further stated, “Let her go to her union because they can’t touch us.”¹⁴

On September 4 Przybyl reported to the office and discovered her key would not unlock the door. She learned later in a telephone call to Jernatowski from her home that the locks had been changed whereupon she asked for a key so she could go to work. He said no, that she could not have one, and when asked why he replied, “Until you have learned to behave and be a good girl, you can’t have a key to this office.” Przybyl testified Jernatowski went on to say, “Why did you ever let yourself get involved with the union stuff? Look what you have done. . . . When you have proved to our satisfaction you can act good and not cause a lot of trouble, then you can have your key back.” By such comments I find Jernatowski and thereby Respondent, unlawfully informed Przybyl she should cease her union activities under the coercive effect of unspecified reprisals as well as the specific condition for returning an office key to her, thereby violating Section 8(a)(1) of the Act in such respects. *E. I. DuPont de Nemours & Co.*, 257 NLRB 139 (1981); and *Federal Alarm*, 230 NLRB 518, 527 (1977).

¹⁴ Revealingly, the minutes also reflect that the board decided to advertise for new staff to replace Baker and Smolenski despite Godzisz’ reminder that an appeal was likely concerning the terminations. The request to make an appeal by Baker was denied.

Przybyl reported for work on September 5 and discovered both Josephine Galata and Al Wojciechowski were there, *sitting on the desk* next to hers. Przybyl testified that the two watched her from the time she arrived at 8:50 to around 11 or 11:30 a.m., remaining only a few feet away from her while she typed or went to the files. Przybyl testified that Galata made a comment about the trouble that she had caused, that as a result "... we have got to sit and watch you all day and make sure that you behave." After the two continued to watch her, not occupying themselves in any other activity, it became distressing to Przybyl who then, at 11 a.m., called Jernatowski and asked to go home ill, and was given permission to do so. Przybyl testified she had first asked the two why their conduct was necessary, and whether they intended to do that the rest of the day.¹⁵ When they told her yes she placed the call to Jernatowski.

10. Przybyl resigns

By letter to the board Przybyl resigned her position effective September 5, "against her will and under extreme personal duress" citing, chapter and verse, the reasons leading to her action. (G.C. Exh. 16.) Since the plan decided on earlier by the board members noted had succeeded, the news of Przybyl's action was welcomed during the board meeting on September 10. Galata, according to the minutes, stated, "Good that she's gone. She was just a troublemaker with that union—her and John Baker. She had no business doing what she did with that union. Now she's gone and we don't have to worry about stuff like that no more."¹⁶ (G.C. Exh. 23.) Godzisz' own recollection is consistent with the minutes.

Based on the foregoing, little further analysis is required to determine that Baker was unlawfully terminated for his union activities in violation of Section 8(a)(3) of the Act, and that Przybyl was forced into resigning by Respondent for the same reason. Their union activity, Respondent's clearly established knowledge concerning such activity, and Respondent's pronounced animosity towards them based on antiunion bias is dramatically clear and strongly evident in this record.

Regarding the reasons for Baker's discharge Respondent's letter to him cited incompatibility, later referred to at this hearing as performance-based¹⁷ yet without adequate supporting proof. Shifting reasons, as well as unsupported reasons for discharging an employee under such circumstances, provide under well-established precedent, the basis to infer an unlawful motive under the Act. *Burk Bros. v. NLRB*, 117 F.2d 686, 687 (3d Cir.

1941); *A. J. Krajewski Mfg. Co. v. NLRB*, 413 F.2d 673, 675-676 (1st Cir. 1969); *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966); and *C & D Transfer*, 258 NLRB 586 (1981). Such inference-making is unnecessary where, as here, Respondent's representatives' motives come through their very own expression of motive as testified to credibly by one of their own and as shown by the minutes of the deliberations at board meetings. *Herman Bros. v. NLRB*, 658 F.2d 201, 210 (3d Cir. 1981), quoting *NLRB v. Ferguson*, 257 F.2d 88, 89 (5th Cir. 1958). That Przybyl was coerced by Respondent's conduct into resigning can hardly be gainsaid. Starting with Smolenski's outright belligerence towards her once union representation became Przybyl's and Baker's avowed interest, occasioned by orders from Smolenski that Przybyl not go to lunch or to job assignments with Baker; Smolenski's close surveillance of Baker and Przybyl; Smolenski once rifling through Przybyl's purse; Smolenski disturbing her at home without demonstrated justification, taunting her with a "want list" and expressing angry displeasure at her refusal to use the list, and refusing to discuss the wage raise he himself had promised her, coupled with the board's subcommittee action¹⁸ demanding a letter of resignation from Przybyl, placing her in effect on probation though admitting her work performance was good, and, in effect taking the posture she was thereby responsible for poor office performance all reasonably, it can be surmised, must have deeply rankled and disturbed Przybyl. As the board continued to table and therefore refuse Przybyl's promised wage increase, and she became the target of outright unlawful conduct in the form of coercive interrogation and threatmaking, it is further reasonable to conclude the pressure on her to escape such treatment increased further. Viewed in this perspective, it seems inevitable that when, out of mistrust and an unlawful design, the board on September 4 took her office key away and Przybyl was placed under constant working surveillance until she became "good" that she would be unable to resist the accumulated force of such coercion and would, as a direct result, resign her position under such conditions imposed by Respondent in plain violation of Section 8(a)(1) and (3) of the Act. *K-Mart Corp.*, 255 NLRB 922, 928-929 (1981); *Pinton Bros.*, 227 NLRB 921, 936-939 (1977); and *S. E. Nichols Marcy Corp.*, 229 NLRB 75 (1977).

It is further concluded that both Baker and Przybyl were denied their promised pay increases, since on or about the time they became eligible for same,¹⁹ for reasons stemming from their activities in pursuit of union representation. I find the absence of any reason whatsoever being advanced for such denial—viz. Smolenski's unexplained refusal to even discuss the matter with Przybyl—and the board's unsatisfactory reason, i.e., not being able "to get to it" given the 3 months or so the matters were pending, when coupled with Respondent's established union animus towards them, provides an ample

¹⁵ Galata testified unconvincingly that she was there to clean up the office and Respondent's counsel suggest Przybyl wanted "protection"—but the described conduct belies both contentions.

¹⁶ The minutes further reflect member Glowacki telling Jernatowski that Baker was the one who brought in the union and "all our problems with it" and that he had threatened us (by such conduct) admitting he, Glowacki was prejudiced.

¹⁷ Testimony concerning the performance of Broadway-Fillmore, generally, offered by Respondent's president, Lionel Davis, could hardly be laid at Baker's feet; alone, moreover, such evidence was wholly inadequate because the base figures against which Davis alleged Broadway-Fillmore was judged did not include all the other divisions and was therefore a faulty comparison. Moreover, it was not even alleged that the Board had before it such information when it fired Baker or indeed that the board acted on such basis.

¹⁸ While not found to constitute an unfair labor practice, this subcommittee action foreseeably made Przybyl more vulnerable to the unlawful pressure exerted against her leading to Przybyl's resignation.

¹⁹ Ninety days after starting work.

basis to conclude the denials were based on discriminatory considerations in violation of Section 8(a)(1) and (3) of the Act. Such finding is buttressed by testimony of Cynthia Draper, an administrative assistant at Respondent's central division. Draper, whose duties include payroll functions, testified that both rehab specialists and assistants (the position held by Baker and Przybyl) at other divisions than Broadway-Fillmore "consistently" received pay increments after their probationary periods—3 months.

In addition, it is clear that the action towards Baker and Przybyl taken above and detailed herein as alleged in the complaint,²⁰ have been demonstrated to constitute more onerous working conditions imposed upon them for the only reason emerging clearly in this record, and that reason is their involvement in pursuing the matter of union representation which was shown to be an anathema to Smolenski, Respondent's chief representative at Broadway-Fillmore, and a matter creating deep animosity and great distaste in Respondent's board members. Respondent thereby further violated Section 8(a)(3) of the Act. *Crown Cork & Seal Co.*, 255 NLRB 14 (1981).

Remaining for consideration is the allegation that Respondent via Anthony Potenza, executive vice president for the board of trustees, threatened employees, created the impression of surveillance of employee union activities, and imposed a more stringent sick leave policy in violation of the Act.

Employee Cynthia Draper, assistant to Potenza, testified that on September 29 Potenza held a meeting in his office with employees Draper and Deborah Wyatt, assistant bookkeeper, during which the subject of union organization arose. Potenza stated he understood union activity was going on and that a union would not be of any use to an organization of "our type because of the structure of funding." He said, according to both Draper and Wyatt, that there were certain people in the organization who felt that if the employees thought they needed the Union that the system ought to be changed or the employees ought to be changed. Potenza was not called to testify, and I credit the employees' corroborating testimony thereby concluding Respondent threatened employees with loss of employment because of their union activity in violation of Section 8(a)(1) of the Act.

On October 2, Draper held a union meeting at her home, attended by 15 employees from NHS, and called in sick that day. At the meeting Wyatt told Draper that Potenza told her, as she was leaving work, "tell Cindy to have a good time at the union meeting tonight." It is concluded that Potenza thereby created the impression that the union activities of employees was being kept under surveillance in violation of Section 8(a)(1) of the Act. *E. I. DuPont de Nemours & Co.*, *supra*, and *7-Eleven*

²⁰ Except the letter of resignation and so-called probationary period, regarding the unfavorable evaluations I find that counsel for the General Counsel advanced sufficient evidence to provide a basis for concluding Baker's evaluations were unsupported; his first was admittedly judged petty by the board, and Przybyl's second was shown unsupported while her first was favorable. Baker's explanations concerning his evaluations were un rebutted credibly by Smolenski and therefore that evaluation stands largely—almost wholly—without support in the record with the result following that it was unlawfully generated—the only reasonable explanation behind its preparation and submission.

Food Store, 257 NLRB 108 (1981). On October 6 Draper put in a sick leave slip asking approval for 2 days' absence. On October 7, an unfair labor practice charge was filed on her behalf against Respondent. On the next working day, October 13, Potenza asked Draper into his office, closed the door, and holding a copy of the charge filed with the Board's Regional Office in his hand, said he did not understand why she had done it since "we had a better understanding" and that he only had said "the union would not be of any use to a nonprofit organization like us."

Potenza pressed further for a reason asking Draper why she had filed the charge and Draper responded it was necessary to protect her position. I find Potenza's undenied interrogation of Draper into the reasons for her charge-filing to constitute coercive interrogation into an employee's protected activities in violation of Section 8(a)(1) of the Act. *Steinerfilm, Inc.*, 255 NLRB 769 (1981). I further find that Potenza, in a later undenied second conversation with Draper, repeated he did not understand her action and was going to have to reconsider his approval of her sick leave since she had a union meeting the night of one of the days involved. Later, the following day, he secured her doctor's telephone number from her and, unlike most procedures—which had been free of such inquiries in connection with approval of sick leave applications, telephoned Draper's doctor seeking to verify her condition on the day in question.

I find Potenza's "reconsideration" of Draper's sick leave request and investigation into the bona fides of her request to have been prompted solely by Draper's filing of a charge under the Act and therefore constituting unlawful discrimination against Draper in violation of Section 8(a)(4) of the Act. *K & S Circuits*, 255 NLRB 1270, 1294 (1981), and *Firmat Mfg. Corp.*, 255 NLRB 1213 (1981).

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, as set forth in section II, above, and therein found to constitute unfair labor practices in violation of Section 8(a)(1), (3), and (4) of the Act, occurring in connection with Respondent's business operations, as set forth in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE REMEDY

Having found that Respondent engaged in the unfair labor practices set forth above, I will recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent discharged John Baker effective August 29, 1980, and constructively discharged Ann Marie Przybyl on September 5, 1980, I will recommend that Respondent be ordered to offer them immediate and full reinstatement to their former or substantially similar positions, without prejudice to their seniority or

other rights and privileges, and that Respondent make them whole for any loss of pay they may have suffered by reason of Respondent's discriminatory actions by payment to them of a sum equal to that which they would have normally received as wages from the date of their termination until Respondent offers them reinstatement, less any net earnings in the interim. Backpay, with interest, is to be computed on a quarterly basis in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 561 (1977).²¹ I further will recommend that Respondent make available to the Board, upon request, payroll and other records in order to facilitate checking the amount of backpay due them and other rights they may be entitled to receive.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent engaged in unfair labor practices in violation of Section 8(a)(1) of the Act by:

- (a) Promising employees their problems would be resolved without a union.
- (b) Threatening employees with unspecified reprisals for engaging in union activities.
- (c) Telling employees that Respondent would not allow a union to represent them, and that unions were not permitted in community programs.
- (d) Coercively interrogating employees concerning their union activities.
- (e) Threatening an employee with discharge because the employee was engaged in union activity.
- (f) Ordering an employee to cease union activities.
- (g) Telling an employee that she would not be given an office key because of her union activities.
- (h) Threatening employees with a change in the system or a change in employees if employees felt they needed a union to represent them.
- (i) Creating the impression of keeping the union activities of employees under surveillance.
- (j) Interrogating an employee concerning why she filed an unfair labor practice charge with the National Labor Relations Board.

3. Respondent engaged in unfair labor practices in violation of Section 8(a)(3) of the Act by:

- (a) Refusing to pay charging parties Baker and Przybyl their promised pay increases because they engaged in union organizational activities.
- (b) Imposing more onerous terms and conditions of employment on Baker and Przybyl by unjustified supervisory telephone calls at their residence during off working time, forbidding them to go out on job assignments or to lunch together, issuing unfavorable job evaluations, engaging in on-the-job surveillance of Przybyl, and denying Przybyl a key to the office.
- (c) Discharging Baker and forcing Przybyl to quit because of their union activities.

4. By imposing a more stringent sick leave procedure on employee Cynthia Draper because she filed unfair labor practice charges Respondent engaged in conduct violating Section 8(a)(4) of the Act.

5. Respondent did not impose open letters of resignation and an additional probationary period of 30 days on employees Baker and Przybyl in violation of Section 8(a)(3) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the record in this case, and pursuant to Section 10(c) of the Act, I hereby recommend the following:

ORDER²²

The Respondent, Buffalo Neighborhood Housing Services, Inc., Buffalo, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

- (a) Promising employees their problems would be resolved without a union.
- (b) Threatening employees with any reprisals for engaging in union activities.
- (c) Telling employees that it would not allow a union to represent them and that unions are not permitted in its program.
- (d) Coercively interrogating employees concerning their union activities.
- (e) Threatening any employee with discharge for engaging in union activity.
- (f) Ordering any employee to cease union activities.
- (g) Telling any employee she would not be given an office key because of her union activities.
- (h) Threatening employees with a change in the system or a change in employees if employees felt they needed a union to represent them.
- (i) Creating the impression of keeping the union activities of employees under surveillance.
- (j) Coercively interrogating any employee concerning why she filed an unfair labor practices charge with the Board.
- (k) Refusing to pay John J. Baker and Ann Marie Przybyl their promised pay increases because they engaged in union organizational activities.
- (l) Imposing more onerous terms and conditions of employment on Baker and Przybyl as described hereinabove or any such similar term because of their union activities.
- (m) Discharging Baker and forcing Przybyl to quit because of their union activities.
- (n) Imposing a more stringent sick leave procedure on any employee because such employee filed unfair labor practice charges with the Board.
- (o) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by the Act.²³

²² In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

²³ A broad cease-and-desist order is plainly warranted by the scope and seriousness in Respondent's infringements of employee rights under the Act, and a demonstrated proclivity to engage in such conduct. *Hickmott Foods*, 242 NLRB 1357 (1979).

²¹ See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

2. Take the following affirmative action:

(a) Offer to John Baker and Ann Marie Przybyl immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings or benefits suffered by reason of their unlawful discharge, with interest on lost earnings in the manner set forth in the section here entitled "the Remedy."

(b) Pay to Baker and Przybyl the promised pay increase retroactive to the date they would have been entitled to same, to wit, 90 days after each commenced the performance of their duties in the Broadway-Fillmore office with interest on the period they would have enjoyed such payment but for the discriminatory withholding of said increase from them in the manner set forth in the section herein entitled "the Remedy."

(c) Expunge from the personnel file of Baker and Przybyl the adverse job performance evaluations hereinabove found discriminatorily motivated.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the term of this Order.

(e) Post at each of its six divisions, including Broadway-Fillmore and the central division in Buffalo, New York, copies of the attached notice marked "Appendix."²⁴ Copies of the notice on forms provided by the Regional Director for Region 3, after being signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 3, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the complaint allegation that Respondent imposed open letters of resignation and an additional 30-day probationary period on Baker and Przybyl in violation of Section 8(a)(3) of the Act is hereby dismissed.

²⁴ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."